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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,397	03/12/2004	Robert S. Flesch	34812.3	7175
27683 7590 12/03/2008 HAYNES AND BOONE, LLP IP Section 2323 Victory Avenue Suite 700 Dallas, TX 75219				
EXAMINER				
NANO, SARGON N				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,397

Applicant(s)

FLESCH ET AL.

Examiner

SARGON N. NANO

Art Unit

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/28/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 7, 18 - 27 is/are pending in the application.
- 4a) Of the above claim(s) 8 - 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 7, 18 - 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Response to Amendment

1. This action is responsive to Amendment filed on August 28, 2008. Claims 1 and 6 are amended. Claims 21 - 27 are newly added. Claims 1 - 7, 18 - 27 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 6 and 23, the phrase "can be " renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7, 18 - 22, 24 - 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. U.S. Patent Pub. No. 2005/0114204 (referred to hereafter as Kim) in view of Desenberg U.S. Patent No. 7,139,732 .

As to claim 1, Kim teaches a method for client-side management of communications channels, the method comprising:

determining a maximum number of simultaneous connections N supportable by a client (see abstract, Kim discloses checking means that checks the number of maximum allowable chatters in a chat room) ;

identifying between one and N entities that meet a predefined criterion (see Paragraph 0006, Kim discloses the predefined number of chatters " criteria" that are allowed in a chat room);

Kim teaches the invention as mentioned above. Kim Does not explicitly teach the granting permission to the identified entities to communicate with a client nor teaches permission to communicate with the client held by entities of the plurality of entities that are not among the identified entities. However, in the same endeavor, Desenberg teaches a private chat room that is administered by a user who grants or deny the access of requests to join a private chat room (see Desenberg col. 5, lines 6 – 29). It Would have been obvious to one of the ordinary skill in the art to combine the teachings of Desenberg to grant or revoke permission to entities to communicate in a chat room, i.e limiting the numbers of chatters in a chat room, with that of Kim to prevent crashing of the server (see Desenberg col.5 lines 19 - 21).

As to claim 4, Desenberg teaches the method of claim 1 wherein granting permission to the identified entities includes sending a permission message from the client to each of the identified entities (see Desenberg col. 15 lines 13 – 28).

As to claim 5, Deisenberg teaches the method of claim 1 wherein revoking permission includes sending a revocation message from the client to each of the entities that are not among the identified entities (see Desenberg col. 15 lines 13 – 28).

As to claim 7, Desenberg teaches the method of claim 1 further comprising: determining whether the client has received permission from each of the identified entities to communicate with each entity (see Desenberg col.15 lines 18 – 21); and

if permission has not been received from one of the identified entities, identifying between one and N entities that meet the predefined criterion, wherein the identifying excludes the previously identified entity from which permission has not been received (see Desenberg col.15 lines 18 – 21).

As to claim 18, Kim teaches a computer readable medium containing a plurality of computer executable instructions for execution on a client computer, the instructions for:

determining a maximum number of simultaneous connections N supportable by the client computer (see Kim paragraph 0022);

identifying between one and N entities that meet a predefined criterion (see Kim paragraph 0006);

sending a permission message from the client computer to each of the identified entities, wherein the permission message indicates that the entity can establish a communication channel with the client computer ; and sending a revocation message from the client computer to each of the entities that are not among the identified entities, wherein the revocation message indicates that the entity can no longer communicate with the client computer . Kim Does not explicitly teach the granting permission to the identified entities to communicate with a client nor teaches permission to communicate to with the client held by entities that are not among the identified entities. However, in the same endeavor, Desenberg teaches as private chat room that is administered by a user who grants or deny the access of requests to join the private chat room. It Would have been obvious to one of the ordinary skill in the art to combine the teachings of Desenberg to grant or revoke permission to entities to communicate in a chat room, i.e limiting the numbers of chatters in a chat room, to prevent crashing of the server (see Desenberg col.15, lines 19 - 21).

As to claim 19, Desenberg teaches the method of claim 18 further comprising instructions for:

determining whether the client computer has received permission from each of the identified entities to communicate with each entity (see Desenberg col. 19 – 21); and if permission has not been received from one of the identified entities, identifying between one and N entities that meet the predefined criterion, wherein the identifying

excludes the previously identified entity from which permission has not been received (see Desenberg col. 15, lines 19 – 21).

As to claim 20, Desenberg teaches the method of claim 19 further comprising instructions for maintaining a permission table on the client computer, wherein the permission table associates each identified entity with a first indicator representing whether a permission message has been sent by the client computer and a second indicator representing that a permission message has been received by the client computer (see Desenberg col.15, lines 19 – 21).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim U. S. Patent Pub. No 2005/0114204 in view of Desenberg U.S. Patent No. 7,139,732 .and in further view of Hedge et al. U. S. Patent No. 6,925,495.

Kim and Desenberg teach the invention as mentioned above. Kim and Desenberg do not explicitly teach the predetermined criteria of connection as the speed of client connection and the processor speed unit within the client. However, Hedge

teaches a method and system for delivering and monitoring an on demand play list over a network using a template where the attributes of the requesting device are determined. These attributes may include information related to the operating system of the requesting device. It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate the identification of the devices' attribute such as the connection and CPU speed of a client device in the combination of Kim and Desenberg inventions to provide optimized performance of communication among devices in real time (see Hedge abstract and col. 1 lines 56 – 65).

Claims 21, 22, 24 - 27 do teach or disclose any limitation above and beyond the limitations of claims 1 – 5, 7, 18 – 20 and therefore are rejected for similar reasons.

Allowable Subject Matter

Claims 6 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments have been fully considered and are persuasive.

In the remarks, Applicants argue in substance that:

A) Kim does not disclose or suggest a client determining a maximum number of simultaneous connections supportable by the client.

In response to A, Kim discloses checking means that checks the number of allowable chatters (connections), the number limit of chatters is set by a room creator. The checking means disclosed by Kim is a software and since it is a client /server architecture, it would have been obvious to have a software residing on a computer such as a server or a client to perform the checking means (See Kim abstract).Moreover, the specification clearly discloses, (paragraph 0026), a server 228 includes software that enables user computers 202 - 212 to log into the server 228 and interact with each other. Therefore the disclosure of Kim's system meets the scope of the claimed limitation.

B) The combination of Kim and Desenberg does not disclose "wherein granting permission to the identified entities includes sending a permission message from the client of the identified entities".

Examiner contends that Kim did not explicitly teach the "granting permission to the identified entities includes sending a permission message from the client of the identified entities". However, to remedy this deficiency a supplemental reference Desenberg is introduced where a private chat room that is administered by a user who grants or denies access of requests to join in a private chat room, i.e limiting the number

of chatters in a chat room (see col. 15, lines 7 – 20). The combination of Kim and Desenberg still meet the claimed limitation as currently presented.

C) Desenberg fails to disclose “a client determining a maximum number of simultaneous connections supportable by the client”

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARGON N. NANO whose telephone number is (571)272-4007. The examiner can normally be reached on 8 hour.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sargon N Nano/

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/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457